No. 83-849

In the Supreme Court of the United States

OCTOBER TERM, 1983

HYATT HOTELS CORPORATION, dba
HYATT REGENCY NEW ORLEANS, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

WILLIAM A. LUBBERS
General Counsel

JOHN E. HIGGINS, JR.
Deputy General Counsel

ROBERT E. ALLEN
Associate General Counsel

NORTON J. COME
Deputy Associate General Counsel

LINDA SHER
Assistant General Counsel

SCOTT MEZA
Attorney

National Labor Relations Board
Washington, D.C. 20570

QUESTION PRESENTED

Whether the Board's determination that petitioner's housekeeping, laundry/valet, concierge and bell staff employees constituted an appropriate unit for purposes of collective bargaining was a permissible exercise of the Board's discretion under Section 9(b) of the National Labor Relations Act, 29 U.S.C. 159(b).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Page

Cases—Continued:

Statute:

In the Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-849

HYATT HOTELS CORPORATION, dba
HYATT REGENCY NEW ORLEANS, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-1g) is reported at 709 F.2d 715 (table). The decision and order of the National Labor Relations Board (Supp. App. 4a-4p)[1] are reported at 260 N.L.R.B. 534. The decision of the Regional Director (Supp. App. 5a-5o) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on June 21, 1983. A petition for rehearing was denied on August 25, 1983 (Pet. App. 2a-2b). The petition for a writ of certiorari was filed on November 23, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

---

[1]"Supp. App." refers to the Supplemental Appendix to the petition in this case.

STATEMENT

1. Petitioner operates a luxury hotel in New Orleans, Louisiana (Supp. App. 4f). The hotel's operations are separated into nine distinct administrative divisions ranging from Convention Services to Public Relations (*id.* at 5e n.4). The Rooms Division, which employs approximately 378 of the hotel's 1,100 employees, is divided into 7 separate departments. The housekeeping and laundry/valet departments, along with the bell staff and concierge departments, are part of the Rooms Division of the hotel (*ibid.*).

In March 1981, United Labor Unions, Local 100, petitioned the Board to hold a representation election pursuant to Section 9(c) of the National Labor Relations Act, 29 U.S.C. 159(c), among the full-time and regular part-time employees in the housekeeping and laundry/valet departments of the hotel (Supp. App. 5e-5f n.4). Petitioner opposed the Union's petition, urging that the only appropriate unit consisted of all full and part-time employees at the hotel, excluding professional, supervisory and confidential employees and guards (*id.* at 5e n.4).

The Regional Director found that a unit of all full-time, regular employees in the hotel's housekeeping, laundry/valet, concierge and bell staff departments, excluding all front office, pbx (telephone attendants), reservations, food and beverage, convention services, engineering, accounting, sales personnel, public relations and security personnel, was an appropriate unit for collective bargaining (Supp. App. 5b, 5f n.4).[2] The Regional Director found that the other departments in the Rooms Division—the front desk,

---

[2]The Regional Director originally included regular part-time employees in the unit. After a hearing, however, the Regional Director found that petitioner did not employ permanent part-time employees and issued a Supplemental Decision and Direction of Election excluding regular part-time employees from the unit description (Supp. App. 4c-4d).

pbx and reservations—"are separately supervised and perform work substantially different in nature from unit personnel" (*id.* at 5h n.6).

The Regional Director found that the unit employees are all unskilled workers who primarily perform simple, manual tasks requiring limited training (Supp. App. 5g n.5). Specifically, the employees in the housekeeping department clean the hotel's rooms and public areas; and the laundry/valet personnel clean hotel uniforms, clean and deliver linen to the rooms and provide a valet service (*ibid.*). The employees in the concierge department provide information to guests and routinely assist housekeeping by cleaning guest rooms on the 27th floor and lobby (*id.* at 5h n.5) and the bell staff department employees carry luggage, move furniture and perform routine housekeeping chores (*ibid.*). By contrast, the other employees in the Rooms Division—the front desk, pbx and reservation departments personnel—perform office clerical functions requiring a higher level of skill and training (*id.* at 5h-5i n.6). Similarly, employees in the Accounting, Sales, Public Relations and Personnel Divisions do primarily clerical, public relations and personnel work (*id.* at 5k n.6). The Security, Engineering and Food and Beverage Division employees do perform manual tasks, but the Regional Director found that their work, which includes protection of property, skilled mechanical repairs and preparation of meals, is very different from work done by unit employees (*id.* at 5i-5k n.6).

The Regional Director also found a high degree of integration of function and contact among the unit employees that did not exist between unit and non-unit employees (Supp. App. 5g-5h n.5). Thus, laundry/valet employees deliver linen to housekeepers every day and help clean guest rooms when housekeeping is understaffed (*id.* at 5g n.5).

Concierge employees are in daily contact with housekeeping and laundry/valet employees (*id.* at 5h n.5). Bell staff personnel also have daily contact with other unit members and assist the housekeeping department by cleaning work areas and the hotel lobby and performing housekeeping services when housekeeping personnel finish their evening shift (*ibid.*).

By contrast, employees in the front desk, pbx and reservations departments of the Rooms Division spend most of their time in their work areas and only infrequently assist in performing unit work (Supp. App. 5i n.6). Moreover, unit employees seldom perform tasks assigned to the non-unit employees in the Rooms Division. The Regional Director found that the contacts between unit and non-unit employees were "incidental and limited in nature due to size and specialization of services offered to guests" and "[did] not warrant a finding that the only appropriate unit is an overall unit" (*id.* at 5k n.6).[3]

In limiting the size of the bargaining unit, the Regional Director took into consideration that in 1977 a unit including the hotel's banquet, beverage, convention services, concierge, engineering, housekeeping, kitchen, laundry/valet, pbx, restaurant, room service, service department, stadium clubs and steward employees was found to be appropriate.[4] The Regional Director noted that in the instant case the

---

[3]The Regional Director found only a small number of permanent and temporary job transfers between unit and non-unit employees (Supp. App. 5k-5m n.6). In fact, most of these transfers occurred within divisions and departments performing related services and not into and out of the departments found to constitute an appropriate unit (*ibid.*).

[4]The 1977 unit was less inclusive than the all-employee unit which petitioner sought here. It excluded "all accounting, front office, reservation, computer, purchasing, sales, [and] secretarial employees" (Supp. App. 6b (footnotes omitted)). The 1977 unit determination involved a different union, which lost the ensuing election. There is therefore no history of collective bargaining at the hotel.

record evidence gave a more detailed description of the hotel's operations than was available in the 1977 case. The new evidence showed infrequent and insignificant interchange or transfers between unit and non-unit employees and indicated a close integration in function among unit employees. Supp. App. 5b-5g nn. 1-4.

2. The Board denied petitioner's request to review the appropriateness of the Regional Director's unit determination (Pet. 2-3), and the Union won the ensuing election ordered by the Regional Director. Upon petitioner's refusal to bargain, the Union filed an unfair labor practice charge against petitioner, and the Board held that petitioner's refusal to bargain violated Section 8(a)(5) and (1) of the Act, 29 U.S.C. 158(a)(5) and (1), and ordered petitioner to bargain with the Union (Supp. App. 4d-4k, 4*l*).

The court of appeals enforced the Board's order (Pet. App. 1a-1g). The court found that substantial evidence supported the Board's determination that the designated unit had a community of interest that made it an appropriate unit for collective bargaining purposes (*id.* at 1d). The court rejected petitioner's claim that the Board had a policy of certifying units in luxury hotels that included all, or even all manual, employees (*id.* at 1e). Finally, the court held that the Board had adequately explained why a unit different from the one that had been approved in 1977 was nevertheless appropriate in 1981 (*id.* at 1f).

ARGUMENT

Petitioner argues (Pet. 11-29) that the Board abused its discretion by failing to certify all of the manual employees at the hotel as the only appropriate unit for collective bargaining. Petitioner contends that the certification decision conflicts with established board policy requiring certification of "all employee" units[5] in luxury, convention hotels;

---

[5]It is not clear whether petitioner's reference to an "all employee" unit includes office clerical employees. Petitioner appears here to be using

that the decision fails adequately to explain why the 1977 certification of "all employees" was not binding on the Regional Director in 1981; and that the certification decision is unsupported by substantial evidence. None of these contentions has merit.

1. Petitioner contends (Pet. 11, 25-27) that it is the Board's policy to certify only comprehensive units containing all operational employees in the luxury hotel industry and therefore the unit determination here is arbitrary. Contrary to petitioner's assertion, the Board has not had a policy of certifying all operating personnel in a hotel or motel since 1967, when it overruled *Arlington Hotel Co.*, 126 N.L.R.B. 400 (1960). See *John Hammonds & Roy Winegardner*, 160 N.L.R.B. 927, 928 (1966), enforced, 387 F.2d 646 (4th Cir. 1967). Instead, the Board has made clear that in *all* hotel cases its

> intention is to apply * * * the general criteria used for determining units in other industries and to make unit determinations after weighing all the factors present in each case, such as the distinctions in the skills and functions of particular employee groupings, their separate supervision, the employer's organizational structure, and differences in wages and hours.

Hotel Equities, 171 N.L.R.B. 1347, 1348 (1968).

Consistent with this case-by-case approach, the Board has often found that units smaller than all operating employees were appropriate for both petitioner's and other luxury hotels. See, *e.g.*, *Hyatt Regency*, 256 N.L.R.B. 1099

---

the term to refer to a unit of "manual" employees, excluding clerical employees (Pet. 25). However, it contended before the Board that only a unit including all its employees, including office clerical workers, would be appropriate.

(1981), enforced, 692 F.2d 763 (9th Cir. 1982) (unit composed solely of maintenance and engineering employees); *Anaheim Operating, Inc.*, 252 N.L.R.B. 959 (1980), pet. for review denied, 676 F.2d 708 (9th Cir. 1982) (unit composed solely of engineering employees); *Arcadian Shores, Inc.*, 229 N.L.R.B. 806 (1977), enforced, 580 F.2d 118 (4th Cir. 1978) (unit composed solely of housekeeping, laundry and bell staff employees which excluded restaurant employees).[6]

2. There is no merit to petitioner's contention (Pet. 23-24) that the Board violated petitioner's "Administrative Due Process" rights by certifying a bargaining unit smaller than the unit found to be appropriate for the hotel in 1977. The Board is not bound by a prior unit determination; it is free to alter the unit on the basis of new evidence so long as it explains the reason for its departure. See *NLRB* v. *Alterman Transport Lines, Inc.*, 465 F.2d 950, 952 (5th Cir. 1972); *NLRB* v. *Puritan Sportswear Corp.*, 385 F.2d 142, 143 (3d Cir. 1967); see also *Victoria Station, Inc.* v. *NLRB*, 586 F.2d 672, 674-675 (9th Cir. 1978). The Regional Director expressly found that the parties in 1981 had submitted

---

[6]Petitioner is incorrect in its assertion (Pet. 26) that the Ninth Circuit follows an established policy that, absent a contrary bargaining history, an all-manual employee unit is the only appropriate bargaining unit in the luxury hotel industry. In *Atlas Hotels, Inc.* v. *NLRB*, 519 F.2d 1330, 1334 (1975), the court upheld the finding that a unit of bakery employees was appropriate and expressly noted that a less than all manual employee unit is appropriate in the hotel industry when the enterprise is not highly integrated and a smaller unit is consistent with the community of interest among those particular employees. The court explained (*id.* at 1335) that *Westward-Ho Hotel Co.* v. *NLRB*, 437 F.2d 1110 (9th Cir. 1971), was not controlling because there the unit chosen was not supported by community of interest factors, but only by the extent of organization. See also *Beck Corp.* v. *NLRB*, 590 F.2d 290, 293 (9th Cir. 1978).

much more extensive evidence concerning the hotel's operations than in the 1977 case and that, on the basis of this new evidence, a unit composed of the housekeeping, laundry/valet, concierge and bell staff employees was appropriate.

Furthermore, in the 1977 case the petitioning union *sought to include* the banquet, beverage, convention services, engineering, kitchen, pbx and steward employees in the unit, whereas the Union in the instant case *did not*. Consequently, the Board's determination in the 1977 case was only that the unit petitioned-for was *an* appropriate unit within the range of appropriate units. It never reached the issue of whether another smaller unit might also be appropriate, nor did it foreclose the possibility of such a ruling if, as here, sufficient evidence were presented to support such a finding. See *NLRB* v. *Alterman Transport Lines, Inc.*, 465 F.2d at 952.

3. Petitioner's challenge ultimately reduces to whether the record supports the Board's finding, upheld by the court of appeals, that the employees of the housekeeping, laundry/valet, concierge and bell staff departments share a separate community of interest from the other employees at the hotel.[7] This fact-bound question does not warrant review by this Court.[8]

---

[7]Nothing is added by petitioner's contention (Pet. 24-25) that the employees who had been included in the 1977 unit, but were excluded from the 1981 unit, should have been allowed to cast challenged ballots. If those employees were properly excluded from the 1981 unit, they were not entitled to vote in the election.

[8]Petitioner suggests (Pet. 27-28) that the Regional Director failed to weigh the relative importance of each of the factors he considered in determining an appropriate bargaining unit. The record shows, however, that the Regional Director carefully examined each relevant factor in his community of interest analysis and found that the great majority of the factors favored the bargaining unit found (Supp. App. 5h-5*l* n.6). Where the Regional Director isolated factors suggesting that a larger

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

REX E. LEE
Solicitor General

WILLIAM A. LUBBERS
General Counsel

JOHN E. HIGGINS, JR.
Deputy General Counsel

ROBERT E. ALLEN
Associate General Counsel

NORTON J. COME
Deputy Associate General Counsel

LINDA SHER
Assistant General Counsel

SCOTT MEZA
Attorney

National Labor Relations Board

JANUARY 1984

---

unit might also be appropriate, he carefully and explicitly assessed their relative importance and concluded that those factors did not render the chosen unit inappropriate (*id.* at 5i-5m n.6). No more was required of him.